IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

MFA.No. 1162 of 2001(D)

OPMV.562/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT:

THE ORIENTAL INSURANCE CO. LTD.,NOW REPRESENTED BY ITS DEPUTY MANAGER, REGIONAL OFFICE, METRO PALACE, KOCHI-18.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS:
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1. CHINNAMMA JOY KAYATHINKAL HOUSE, POTHENPURAM P.O., PAMPADY.

2. JIJU KURUVILLA, DO. DO.

3. JAISON KURUVILLA DO. DO.

BY ADV. SRI.MATHEW JOHN (K) FOR R3
SRI.BABY THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/03/2007, ALONG WITH MFA NO. 1298 OF 2001 THE COURT ON 12.4.2007 DELIVERED THE FOLLOWING:

ORDER ON CMP 8560/01 IN MFA 1162/01

DISMISSED

SD/- P.R. RAMAN, JUDGE.
SD/- ANTONY DOMINIC, JUDGE.

12/4/2007

P.R.Raman & Antony Dominic, JJ.
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M.F.A.Nos.1162 & 1298 of 2001
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Dated this the 12th day of April, 2007.

JUDGMENT

Antony Dominic,J.

These appeals have been filed by the additional fourth respondent – Insurance Company and the second and third petitioners in O.P.(M.V.)562 of 1990 on the file of the Motor Accidents Claims Tribunal, Kottayam. The facts which led to the filing of the case are that in an accident that occurred on 16.4.1990 at about 4 p.m. when late Joy Kuruvila was driving his car bearing registration No.KEK 4122 through K.K. Road near Pambadi Maveli Store, a bus bearing registration No.KRK 3057 came from the opposite direction and hit against the car. In the accident, Joy Kuruvila sustained serious injuries and on the way to the hospital, he succumbed to the injuries. It is averred that the deceased was working as a Manager in the Freeman Management Corporation at its New York Branch in the United States of America and was getting a monthly salary of 2500 American Dollars. At the time of his death, the deceased was only 45 years of age and could have continued in service till 65 years. The claimants were his wife, children and the fourth petitioner – mother of

the deceased, who is since dead. Alleging that the total annual financial dependency of the petitioners was Rs.3,60,000/-, the claimants laid the claim for Rs.57,25,000/- as compensation with 18% interest.

2. Before the Claims Tribunal, originally, M/s. United India Insurance Co. Ltd. was impleaded as the second respondent, alleging that it was the insurer of the bus involved in the accident and on the second respondent filing the written statement denying any such policy, the additional fourth respondent, namely, Oriental Insurance Co. Ltd, which has filed M.F.A.No.1162 of 2001 was impleaded. The additional fourth respondent filed a written statement admitting the policy in the name of the first respondent before the Motor Accidents Claims Tribunal, and denying rashness and negligence on the part of the additional third respondent, who was driving the bus. It was alleged that the accident occurred on account of the rashness and negligence on the part of the deceased in driving the car and there was specific allegation that the deceased was driving the vehicle while under the influence of alcohol.

3. On behalf of the claimants, evidence of PWs 1 to 3 were marked and Exts.A1 to A8 were marked and on behalf of the respondents Exts.B1 to B3 were marked. The Tribunal held that the

accident occurred due to the negligence of the additional third respondent – driver and also on the part of the deceased and the contribution of negligence was apportioned in the ratio of 75:25. Proceeding further, the Tribunal awarded a total compensation of Rs.18,38,500/- and apportioned the compensation in the ratio of 75:25. On this basis, the Tribunal held that the petitioners are entitled to get Rs.13,80,625/- with 12% interest from the date of petition till realisation and proportionate cost from the first respondent, additional third respondent and fourth respondent. It is challenging this award, the additional fourth respondent – Insurance Company, has filed M.F.A.No.1162 of 2001 and M.F.A.No.1298 of 2001 is filed by claimants 2 and 3, the children of the deceased seeking enhancement of compensation awarded by the Tribunal.

4. Arguing M.F.A.No.1162 of 2001, Shri.Mathews Jacob, Senior Counsel contended that this was a case where the accident had occurred on account of the negligence of the deceased and in view of the positive finding entered by the Tribunal, the Tribunal ought not have made the Insurance Company liable, for 75% of the compensation awarded. He also submitted that the monthly contribution of the deceased, Rs.10,000/- as fixed by the Tribunal, was exorbitant. It was contended that going by the records available, the

deceased was above 45 years at the time of the accident and therefore, the Tribunal ought not have taken 15 as the multiplier. On the other hand, Shri.Mathew John, counsel appearing for the appellants in M.F.A.No.1298 of 2001 attempted to sustain the ratio in which the compensation is apportioned by the Tribunal and complained that the income of the deceased that has been fixed by the Tribunal was too low and according to him, it was against the evidence available before the Tribunal itself. He made specific reference to Ext.A6, the salary certificate issued by the employer of the deceased which was accepted by the Tribunal as a piece of evidence. On this basis, Shri.Mathew John pleaded for enhancement of the compensation awarded.

5. We have considered the submissions made by counsel on either side. The first question that requires to be answered is whether in the light of the finding of negligence on the part of the deceased, the Tribunal was justified in apportioning the compensation in the ratio of 75:25. From the records of the case, it is obvious that the car driven by the deceased was going from the east to west and the offending bus was coming from the opposite direction, namely, west to east. The road was lying straight. It could be seen that the place of accident was 2.23 metres southwards from the northern tar end where

the tar road had a width of 5.83 metres. From the mahazar also it is evident that the scene of accident was on the northern side of the road, which also indicates that the car was on the wrong side of the road. We have also been referred to Ext.A5 post mortem certificate, which is referred to in the award itself, where mention has been made that the stomach of the deceased was found to be smelling of spirit, which indicated the presence of alcohol. These pieces of evidence would certainly indicate negligence on the part of the driver of the car.

6. However, the Tribunal, has made reference to the oral evidence that was available. Though PW1, wife of the deceased, was not an eye witness to the accident, PW3 was travelling in the car at the time of the accident. He has testified that the offending bus was driven in a rash and negligent manner by the additional third respondent and that the accident occurred on account of that reason. Ext.A1 F.I.R., Exts.A2 and A3 M.V.I. Reports, Ext.A4 charge sheet and Ext.A5 post mortem certificate have been referred to by the Tribunal. Further reference was also made to Ext.B1 F.I. Statement given by PW3, Sub Inspector of police, Pampadi. It was making reference to the aforesaid evidence that the Tribunal concluded that the accident has occurred due to the negligence on the part of the additional third respondent in driving the vehicle and on the part of the deceased in

driving the car. In addition to the evidence, we also find that the road in question where the accident occurred was a straight road and if the drivers of the vehicles were careful in their driving, such an accident would not have been happened. In the light of the evidence that is available, we cannot agree with the conclusion of the Tribunal with regard to the extent of negligence of the deceased. According to us, the deceased was equally negligent and therefore, the Tribunal ought not have apportioned the liability in the ratio of 75:25. In our view, considering the evidence on record and the negligence that has been contributed by either side, this was a fit case where negligence ought to have been apportioned in the ratio of 50:50 and the compensation ought to have been apportioned on that basis.

7. One of the contentions raised by Shri.Mathews Jacob was about the multiplier that has been adopted. According to him, the evidence indicated that at the time of the accident, the deceased was above 45 years and if that be so, the multiplier of 15 adopted by the Tribunal was clearly erroneous. In order to ascertain the correctness of this submission, we have perused the date of birth of the deceased as recorded in his international driving licence, which is seen to have been produced before the Tribunal on 27.9.1995 along with a memo. In the driving licence, 21.4.1945 is recorded as the date of birth of the

deceased. The accident having occurred on 16.4.1990, the deceased was well below 45 years of age. If that be so, the multiplier of 15 adopted by the Tribunal cannot be faulted.

8. What remains is the issue regarding the correctness of the income of the deceased and the compensation that is awarded by the Tribunal. At the time of the accident, it is beyond controversy that the deceased was working as Manager in the Freeman Management Corporation at its New York Branch in the United States of America. Ext.A6 is the certificate dated 23.4.1990 issued by the Freeman Management Corporation, U.S.A. The Tribunal has found that Ext.A6 was attested by the Notary Public and counter signed by the Consulate General of India, New York. It is also stated that as per Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act 1948, "every oath, affidavit and notarial act administered, sworn or done by or before any Diplomatic or Consular shall be as effectual as if duly administered, sworn or done by or before any lawful authority". In view of the above provision, Ext.A6 was accepted to prove the employment and income of the deceased.

9. Before the Tribunal, PW2 – Manager of the State Bank of Travancore, Pampadi Branch, was examined to prove Exts.A7 and A8. Ext.A7 is a copy of the exchange rate list relating to April, 1990.

Ext.A8 related to January, 1993. Ext.A7 evidences that in April, 1990, when the accident also occurred, the exchange rate for U.S. Dollar was Rs.17.30 and this has been accepted by the Tribunal. We also agree with this finding. However, despite the evidence that is available, the Tribunal has fixed Rs.10,000/- as the monthly contribution of the deceased to the family. This is despite the case of the claimants that the deceased used to give Rs.30,000/- per month to the wife for household expenses.

10. As rightly found by the Tribunal, going by Ext.A6 certificate issued by the Freeman Management Corporation, U.S.A., the deceased was having a monthly income of 2500 U.S. Dollars. Ext.A6 was duly attested by by the Notary Public and was also countersigned by the Consulate General of India, New York. Applying Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, the Tribunal also found that Ext.A6 can be accepted as proof of employment and the income of the deceased. Even if 1/3rd was deducted towards personal expenses of the deceased, still more than 1,600 U.S. Dollars could be taken as the dependency benefit. Even if 1,500 U.S. Dollars were taken as the dependency benefit, applying the exchange rate as certified by Ext.A7, it would work out to Rs.25,950/- per month. For the purpose of this case, we are not taking into

account the future prospects that the deceased certainly had from out of employment.

11. Taking the above amount of Rs.25,950/- as the monthly income and quantifying the dependency of the family applying the multiplier of 15, the total compensation payable would be Rs.46,71,000/-.

12. In addition to this, under different heads, the Tribunal has awarded Rs.38,500/- and hence the total compensation payable is Rs.47,09,500/-.

13. Towards dependency benefit and other heads, the amount already awarded is Rs.18,38,500/- and if appropriated in the ratio of 75:25, the individual entitlement of the appellants would be Rs.4,59,625/- each.

14. In terms of the award as modified by us, the individual entitlement of the claimants would be as hereunder:

50% of the total amount	:Rs.23,45,750.00
Amount due to each claimant	:Rs. 7,84,916.66
Amount already awarded	:Rs. 4,59,625.00
Balance due	:Rs. 3,25,291.66

15. By the impugned award, the Tribunal has directed that on

deposit of the awarded amount, petitioners 1 to 3 before the Tribunal, namely, wife of the deceased and the appellants herein will be entitled to the amount equally. Since the first petitioner before the Tribunal, the wife of the deceased, has not filed any appeal against the award, in so far as she is concerned, the award has become final, and the entitlement to additional compensation is hence only for the appellants herein, who were claimants 2 and 3.

16. In view of our finding in M.F.A.No.1162 of 2001 filed by the Insurance Company that the compensation is liable to be reapportioned, from 75:25 into 50:50, the compensation entitled to the first claimant wife is liable to be reworked on that basis and as against Rs.4,59,625/- already awarded by the Tribunal, she will be entitled to only Rs.3,06,416.66 and the excess amount of Rs.1,53,208.34, if already realised, is liable to be refunded.

17. In the result, in terms of the award of the Tribunal as modified herein above, we hold that the appellants are entitled to additional compensation of Rs.3,25,291.66 each with interest at 7% per annum from 24.5.1990. It is also held that the first claimant, the wife of the deceased, will be entitled only to Rs.3,06,416.66 as against Rs.4,59,625/- awarded by the Tribunal.

M.F.A.Nos.1162 and 1298 of 2001 will stand disposed of as above.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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